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DATE

STATE OF DELAWARE

In re Application of
Appelquist et al.
Application No. 09/623,714
Filed: September 7, 2000
Attorney Docket No. 09546-011001

ON PETITION

This decision is in response to the petition under 37 CFR 1.137(a) filed December 31, 2002. This petition is being treated as a petition under 37 CFR 1.181 as a petition to withdraw the holding of abandonment.

The petition to withdraw the holding of abandonment under 37 CFR 1.181 is hereby **GRANTED**.

The application was held abandoned July 16, 2002. The application was held abandoned for failure to timely respond to the Final Office Action mailed April 15, 2002. The Office Action set a three month statutory period of time for reply. Notice of Abandonment was mailed December 4, 2002.

Petitioner asserts non-receipt of the Final Office Action.

In the absence of any irregularity in the mailing of the Final Office Action, there is a strong presumption that the Office Action was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Office Action was not in fact received. The showing required to establish non-receipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. *See*, MPEP 711.03(c). The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office communication may have been lost after receipt rather than a conclusion that the Office communication was lost in the mail.

Office records indicate the Office Action was properly mailed to the practitioner of record at the correspondence address of record at the time of mailing. Thus, there was no irregularity in mailing the Office Action on the part of the United States Patent and Trademark Office.

In support of the petition, however, petitioner has provided a copy of the docket record where the Office Action would have been entered had it been received along with a statement from

practitioner that a search of the docket record and file jacket indicated that the Office Action was not received.

In view of the evidence provided by petitioner, the Notice of Abandonment is hereby VACATED and the Notice of Abandonment is WITHDRAWN.

No petition fee is due in connection with this matter.

This application is being forwarded to Technology Center 1700 for remailing of the Final Office Action.

Telephone inquiries should be directed to Huyen Le at (703) 305-1645.



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